Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM A.D. 1973

NO. 74-245

JOHN A. HUTTER, et al
Petitioners

versus

CITY OF CHICAGO
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS

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IN THE
SUPREME COURT OF THE UNITED STATES

JOHN A. HUTTER, et al.,
Petitioners

versus

CITY OF CHICAGO
Respondent

PETITION FOR A WRIT OF CERTIORARI
TO THE
APPELLATE COURT OF ILLINOIS

(a) Opinions in Court Below

There are no official or unofficila reports. The opinion of the court is appended to this petition.

(b) Jurisdictional Grounds

(i) (ii) on October 1, 1973 the appellate Court of Illinois, First District, confirmed the decision of the Circuit Court. Case 57367.

On November 1, 1973 the appellate Court of Illinois First District denied appellants petition for a rehearing.

On February 1, 1974 the Supreme Court of Illinois denied a petition for leave to appeal. Case 46331

On March 21, 1974, the Supreme Court of Illinois entered the following order.

"The portion of the motion by petitioners for reconsideration of the order denying petition for leave to appeal is denied. The part of the motion for stay of mandate pending appeal to the Supreme Court of the United States is allowed."

(iii) Petitioners rights under Amendments IV, V and XIV have been grossly violated by respondent.

(a) The State courts have decided a federal question involving the U.S. Constitution in a way probably not in accord with applicable decisions of this court and the provisions of the Constitution.

(c) Questions Presented for Review

1. Can a city like the city of Chicago, its corporation counsel and its appointed Receiver, contemptuously ignore the provisions of the Constitution of the United States, the provisions of the Constitution of the State of Illinois, the rules of the Supreme Court of Illinois, the ordinances enacted by its City Council and all the rules of the common law, and ruthlessly destroy any citizen or resident within its control who seeks justice?

(d) Constitutional Provisions and Ordinances Involved.

1. United States Constitution

(a) Amendment IV

The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, shall not be violated and no warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.

(b) Amendment V

. . ."nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

(c) Amendment XIV

. . ."nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction, the equal protection of the law."

2. The Constitution of the State of Illinois.

3. Illinois Supreme Court Rules Revision effective Janaury 1, 1970 Article 1-12 proof of service in the Trial and Reviewing courts;

   Article II Process and Notice 101-1 or Subpeona Duces Tecum 181 appearances

   Article III Civil Appeals
   305 - Supersedeas
   Appellate court to the Supreme Court

4. **Ordinances City of Chicago**
   Building Code Chapters 67-4; 78-15-1-4

5. The Common Law.

(e) Statement of the Case

Attorney John A. Hutter one of the defendants in this action and sole attorney of record was never served notice of hearing asking for the appointment of a Receiver in Case No. 67 CH 51317 which was filed in the year 1967 and for which the defendants have suffered untold harassment ever since.

The undated purported order was entered by Judge Louis A. Wexler. Previously he told Hutter in court "There is nothing before this court. Go to the Appellate court or someplace else."

The order in the first paragraph states that "all parties having been served" – this is false, neither the attorney of record nor the parties were ever served.

In paragraph two simply states that "Charles B. Zeller, Jr., be and is hereby appointed Receiver of the building commonly known as 3526 North Marshfield Avenue, Chicago, Illinois."

Not one word states why this person was appointed Receiver of defendant's homestead and home for some 40 years.

Not one word states what the purpose or duties of the Receiver were to be or what he was to accomplish or why he was appointed.

All of these questions were raised by the Appellate Court of Illinois 57367 at its Oral hearing.

Neither Attorney of record John A. Hutter nor his wife, Clara, co-defendant, were ever served a copy of the purported order.

Marian Coy, daughter who lives at a different address, who has no interest at any time in said property as was firmly established in 1967 when this action was first filed, was served a copy of a Zeller letterhead with an unsigned purported order.

No such order was ever found for weeks in the files of said case.

At the time of the purported order for the appointment of the receiver two cases were pending in upper courts and supersedeas was in effect in both of them.

Case 55302 appellate with a $1,000.00 approved bond was on appeal to the Illinois Supreme Court which denied leave to appeal June 19, 1972. The case was then appealed to this court Case No. 72-447. See item (i) page 2. In the decision herein appealed from the Appellate Court states (City of Chicago v. Hutter, 2 Ill. app.3d, 1104, 278 N.E.2d 185 (abstract). The defendant then petitioned the Illinois Supreme Court for leave to appeal. This petition No. 44974 was denied on March 29, 1972.

Hence if the receiver was appointed on March 3, 1974 then he was appointed while supersedeas was in effect. In fact it was in effect on November 20, 1972 when this court in 72-447 denied certiorari.

The Appellate Court cites Appellate Court Case 57165 which was also pending on March 23, 1972 and certiorari was in effect. Here Hutter had provided additional exits the corporation council had requested in open court and they were approved by every one. Hutter asked the court to determine what he should do with apartments. In the meantime he proceeded in vacating the apartments. Here was the second violation of certiorari in effect when receiver was illegally appointed.

The appellate court states further, "Defendant petitioned the Illinois Supreme Court for leave to appeal No. 4544. This petition was denied by the Illinois Supreme Court on January 25, 1973." This was almost a year after receiver was appointed. There was no possible excuse for appointing a receiver.

Although Hutter could not find a copy of the purported order for a Receiver supposed to have been filed on March 23, 1972 he filed a notice of appeal on April 17, 1972 in accord-

ance with Illinois Supreme Court Rule 305 A which states, "An appeal operates as a supersedeas if appeal is filed within 30 days after the judgment appealed from becomes final and a bond is filed within 30 days or an extention thereof." A bond for $2,500.00 was filed as approved by the Appellate Court of Illinois. The Receiver ignored this second supersedeas as he and the lower court had ignored the supersedeas in effect when the receivership order was entered. He proceeded to threaten tenants and had the Circuit Court enter an order charging the tenants with Hutter's alleged violations which became res adjudicata in 1967. He demanded rents from tenants and forced them to vacate the building. All of this was in line with Corporation Counsel O'Hara's threat to Hutter to punish Hutter and make him pay for the $10,000. worth of annoyance the appeals caused him."

When Hutter protested by motion to the Appellate Court in No. 57367, Zeller thru his attorney Faber, falsely stated that he obeyed the supersedeas order, that he did not collect rent from tenant Boynton who occupied apartment which Hutter was trying to vacate in compliance with the mandatory order of the court. Zeller and Faber used Boynton as an agent to harass the Hutters and the tenants in the building. He allowed her to seize the second apartment which Hutter had vacated and to combine them into one. She controlled access to roof and stopped up drains so apartments below were flooded and ruined. Her canceled checks proved rent was paid to Zeller after he told appellate court that he had obeyed supersedeas order, Hutter tried in three successive forcible detainer actions in 1972, 1973 and 1974 to evict Boynton and carry out the mandatory injunction to vacate the apartments she occupied. Zeller's attorney Faber applied enough clout to prevent her eviction. Thus Zeller instead of enforcing the mandatory injunction he was sworn to enforce, did everything possible to prevent it from being enforced. The seven years of harassment by Corporation Counsel O'Hara and Zeller finally caused the death of Mrs. Hutter on May 15, 1974. On May 20, 1974, tenant Boynton was forced to vacate her apartment and the additional one she had seized.

O'Hara and Zeller harassed Hutter's daughter Marian to the point she had to leave her important job as a supervisor interviewer for Public Aid and flee the city permanently. Without notifying Hutter they would serve a subpeona on her at work where she had a hundred people waiting to be interviewed and tell her they would put her in jail if she did not leave all those people and be down in court in one hour. The court fined her for not abandoning those people.

At 1:30 a.m. in the morning O'Hara had the police conduct a Fred Hampton type raid on Hutter's building. They poured all over the building and roof flashing lights and terrorizing everyone, while the squadron waited below to take the Hutters to jail. Poor Mrs. Hutter was hysterical. She had been under constant care by Billings Hospital, University of Chicago. The action of these people made the last seven years of Mrs. Hutter's life a living hell.

The fact of the illegal receivorship is the basic question here. However just about every possible violation of due process and the proper conduct of legal procedure has occurred during the past seven years.

(1) In the first instance in case No. 67 CH 5317 filed in 1969, the defendants were never served.

(2) Many violations were alleged in above action, including that of exits. Complaining witness Fire Lt. Roloff testified they were OK, and that even the question of exits was adequate. Thus ended the first trial before Judge Machala. Next the Corporation Counsel got another court procedure over by Judge Kvistad to try the case all over again – double jeopardy – at the second trial the only issue to be heard was that of exits. Under the City Building Code Chapters 67-4; 78-15-1-4 the City asked for additional exits which the law provided.

Instead of ordering more exits which the City legally could ask for under the ordinance, the court issued a mandatory injunction ordering the apartments on the top floor to be vacated. This was contrary to law and deprived the defendants of the use of their property without due process.

(3) At the above trial, subpeonas duces tecum were not enforced.

(4) Later Judge Wexler fined Hutter $500. because he had appealed above case.

(5) And of course later Judge Wexler appointed a Receiver who saw to it that the mandatory injunction was not enforced.

(f) Inasmuch as Judge Wexler told Hutter there was nothing before his court and would not hear him, Hutter then filed a notice of appeal dated April 17, 1972 and the case was then in the Appellate Court. According to Illinois Supreme Court Rules, Hutter asked that court to set a supersedeas bond, which the court did in amount of $2,500.00.

From the outset in 1967 Hutter had protested that the city had violated his rights under Amendment 14; that it denied him due process and that it deprived him of the use of his property contrary to law, the City Ordinance and the Constitution of the United States.

This of course, was also stressed in briefs filed in Appellate No. 57367 where Hutter claimed his rights under Amendments 4, 5 and 14 as well as his civil rights were violated.

(g) On page 5 of the decision in Illinois Appellate No. 57367 the court states "Defendants also argue some vague and conclusory allegations relating to alleged deprivation of their Constitutional rights. We are of the opinion that these issues were neither presented nor litigated in the trial court and therefore cannot be raised on appeal."

What opportunity to litigate in trial court?

1. The trial judge Louis A. Wexler told Hutter to get out of his court and stay out. The transcript of the hearing over a year before, acknowledged and signed by the judge, shows that the judge told Hutter. "There is nothing before this court, go to the Appellate Court or "some place else." The judge would have the bailiff put one hand on Counsel Hutter's shoulder and the other on his gun as the judge threatened to incarcerate him.

2. Hutter, the only attorney of record was never served any notice of a hearing for a Receiver and knew nothing about it.

3. As soon as Hutter heard of the Receivorship appointment, he filed a notice of appeal and asked the court to set an appeal bond.

4. On page 2 and 3 of his brief Hutter claimed his civil and Constitutional rights under Amendment 14 were violated. The procedure denied him due process. So, at the very earliest opportunity Hutter raised the federal question as he had in all the previous litigation.

5. The Appellate Court, instead of seeking the truth, following the Constitution, the rules of the Illinois Supreme Court, the Building Code Ordinance of the city of Chicago, the trial and testimony in the first instance, the "cover up" when a subpeona duces tecum was ignored, the double jeopardy repeat trial when the first was not to the liking of the corporation counsel, an order by the trial judge which bore no resemblance to the ordinance or what was asked for in the complaint, the request by the corporation counsel that exits be installed to countermand the illegal mandatory injunction to vacate the apartments in question, thus depriving Hutter of the use of his property contrary to the Constitution and the City ordinance in which Hutter completed the action in court without notice to Hutter, the attorney of record, the absurd charging of building violations to tenants that were charged to Hutter in 1967 and res judicata at the time, the "stay" or supersedeas which the Appellate Court refused to enforce; the fact that the order for Receiver bore no date and specified no duties; the fact that the order stated all parties were served while Hutter was never served; the fact that the Receiver, instead, seeing that the apartments were vacated according to mandatory injunction, let the tenant, Boynton, seize and occupy the apartment Hutter succeeded in vacating, collected rent from her and for 3 years prevented Hutter from evicting her.

Hutter could go on but it is clear that the Appellate court in no way was seeking the truth. Instead it rendered an opinion intended as a coverup for all of the atrocities committed against the 74-78 years old defendants which caused the death of Mrs. Hutter.

6. It therefore is a cruel joke when the court states on page 5: "The mandatory injunction was originally issued by Judge Kvistad in 1968" (the case was originally tried by Judge Machala where the complaining witness testified nothing was wrong in the buildings or exits and that the building was constructed new in strict compliance with the permit). The court goes on: "As of March 23, 1972 the date on which Judge Wexler appointed the Receiver, defendants had still not complied with the injunction." Hutter complied with it two years before, then the City and court asked for the exits they asked for originally (which was according to code) and told Hutter he could rent the units. Then the City said again the units must be vacated and Hutter again started to vacate and asked the Appellate court what in common decency he should do.

On March 23, 1972, one apartment remained to be vacated. The tenant refused to pay rent or move and the corporation counsel used her as an agent and witness against Hutter.

For the next three years 1972-MI-61613, 1973-MI-64952 and 1974-MI-52077 these forcible detainer actions were filed by Hutter to evict this tenant, Boynton, agent for the corporation counsel, purported Receiver Zeller and his attorney Faber, who not only refused to vacate the apartment she had rented but also was permitted to seize as a trespasser use, tear apart and convert to her own use, the apartment Hutter had succeeded in vacating to comply with the unconstitutional mandatory injunction.

Thus Zeller's attorney Faber defended the tenant Boynton and prevented her eviction even though the trial judge Edith Sampson was shown a copy of the Appellate Court No. 55302 confirming the mandatory injunction by Hutter and fellow attorney Samuel Miller.

Were it not for the fact that an out of town judge was hearing evictions the day 1974-MI-52077 was heard, Boynton would still be in possession of the apartments. The judge severely criticized Faber for trying to represent both sides of the case. This tenant vacated the apartments May 20, 1974 owing three years rent. The endless harassment of the Hutters for 7 years by the respondent's agents caused the death of Mrs. Hutter on May 15, 1974 – 5 days before the tenant moved.

Thus it should be clear to this court that corporation counsel O'Hara did not surreptitiously obtain the appointment of Zeller as a Receiver to enforce the mandatory injunction but as a means of carrying out his threat to Hutter "to punish him for having the audacity to appeal the case in the first place causing him $10,000.00 worth of annoyance."

On page 6 the court piously quotes Community Renewal Foundation, Inc. v. Chicago Title and Trust Co. 44 Ill 2d 284, 255 NE 2d 908,913:

"We regard the appointment of a Receiver to obtain compliance with the building codes, where because of continuing violations the property has become unsafe and a danger to the community as within the inherent power of an equity court."

Hutter of course would agree with that opinion, but here you have a case where the Constitutional question of what to do about the apartments was up on appeal before the Supreme Court of Illinois, the Appellate court had stayed its mandate, supersedeas or "stay" was in full effect, and the court had not rendered an opinion. Furthermore, Hutter had vacated one apartment and was trying to vacate the other in an attempt to obey the mandatory injunction in case the court should hold that regardless of the fact that Hutter supplied the additional exits at the request of respondent and the court so he could rent the apartments.

What possible motive could O'Hara have had to go into court without notice to Hutter and under-handedly have a Receiver appointed for his homestead without instructions, except to exact revenge against the Hutters for having appealed an unconstitutional order?

The petitioners have outlined in their statement of facts what had taken place earlier in the history of the case.

On page 2 the Appellate court states: ". . . the defendants then proceeded to petition the United States Supreme Court for a writ of certiorar No. 954 October Term 1969 which was denied on February 24, 1970."

"The case was returned to the trial court for compliance with the mandatory injunction. The defendant failed to so comply and was subsequently cited for contempt of court and was fined $500.00 on October 9, 1970."

The above statement is not in accord with the facts. It is suggested that the court read their petition for a Writ of Certiorari No. 72-447 which the court denied.

The court will find that the fine was entered on May 25, 1970, not October 9, 1970; that the court said, "you were fined for carrying a case on our books for three years (because of appeal), you were fined because the case is growing whiskers." "If the Appellate court did not give defendant relief on fine $500.00) he would fine the defendant $5,000.00 more."

At the time of the May 25 fine Hutter had a case in the U.S. District Court Northern District of Illinois, pending before Judge Hubert Will concerning this same matter which had not been decided. This enraged Judge Wexler.

At the time Hutter was making every effort to vacate the apartments and obey the mandatory injunction. But then see page 10 of petition 72-447. "While Hutter was vacating apartments in compliance with mandate, assistant corporation counsel Dickman in transcript dated June 16, 1970 said, "Mr. Hutter, are you going to provide adequate means of egress for the fourth floor;" also see page 10, August 21, 1970 transcript which includes details and statement of Judge Wexler to keep out of his court.

Hutter was told he could of course rent the apartments with the new exits. You can't – you can – a continued yo yo effect. Did counsel Faber settle the matter when he collected rents from the apartment in question and prevented Hutter from vacating it? Did he say the apartments can be rented?

On page 2 the court states: "(City of Chicago v. Hutter) III App 3d 1104 2 8 N.E. 2d 185 (abstract). The defendant then petitioned the Illinois Supreme Court for leave to appeal. This petition No. 44974 was denied on March 29, 1972. **The purported Receiver was appointed March 23, 1972** while supersedeas – stay was in effect; continuing the court states, "Subsequent to this denial defendant proceeded to petition for a writ of certiorari from the United States Supreme Court. This petition was denied on November 20, 1972 – **eight months after Receiver was appointed.** No mandate was ever sent down by the upper court.

On page 5 the Appellate Court states: ". . . we shall hereinafter utilize the present designation namely "stay" order. The rules governing stay orders are set forth in Ch 110A, par 305 (b) (1) Ill. Rev. Stat 1971 Ch 110A, par 305 (b) (1) which provide that the trial or reviewing court may stay pending appeal, "the enforcement, force and effect of any other final or interlocutory judgment or judicial or administrative order." The paragraph is clear and unequivocal as to the effect of a stay order, namely that it stays the enforcement of the order or judgment appealed from."

A $1,000.00 approved bond was in full effect since May 25, 1970, when Hutter was fined and this provided for "supersedeas" or "stay."

Although the $1,000.00 bond was approved on May 25, 1970 when Hutter filed his notice of appeal, he had to request time and time again for Judge Wexler to enter his order which he did not do until October 9, 1970.

The Supreme Court of Illinois did not deny leave to appeal until June 19, 1972. The case was then appealed to the Supreme

Court of the United States Case No. 72-1972-October term. It was late in 1972 – eight months after appointment of Receiver on March 23, 1972 that the court denied certiorari. No Appellate court ever sent down its mandate. Until that was done, supersedeas or "stay" remains in effect.

As the Appellate Court pointed out on page 3, Hutter filed another appeal No. 57165 asking the court to tell him what to do: Vacate or rent the apartments. This collateral appeal was denied on October 16, 1972, long after Receiver was appointed March 23, 1972.

No court ever would tell Hutter whether he should continue to vacate the apartments or rent them after he had installed the approved exits which the court first demanded in 1967.

(f) Argument

We have just passed through the sad spectacle whereby the most capable president our country ever had has been hounded and driven from office for doing what was necessary to preserve our republic.

Before the last election Hutter wrote Mr. Nixon that he must do whatever is necessary to insure his reelection so he could continue his magnificent program. (I did not have in mind the assinine Watergate or Ellsberg capers). Neither did the president.

In view of the democratic convention and the ideas of Senator McGovern I feared the possibility of a coup by the military to protect their honor and the prisoners in Viet Nam.

Mr. Nixon always put his country first. That is why he resigned. I believe he made a great mistake. I wrote him to fight all the way and publicize the shortcomings of those who would crucify him.

As a result, as we approach the 200th anniversary of our republic, we begin a journey down the road to the "modus operandi" of the other "republics" of the Americas. Assassination, coups, military dictatorships and the end to our freedom.

Those who would destroy our republic have succeeded in taking a giant step – not unlike the first few shots of heroin. We now have a gentle non elected president and a non elected vice-president, the first step, the first precedent, was difficult. From now on it will be easy for us to slip down the road to the point where we will have government – by coup. Has the executive branch been destroyed? Will presidents come and go like attorney generals? Before long we will have someone who will appear on the scene and promise to bring order to our country. His name may not be Adolph, Benito or Joseph.

We are close to the point where the majority of the citizens have lost respect for our three branches of government and the effectiveness of our Constitution.

The court has acted in a way to destroy our cities, our schools, the quality of our people, our property rights and the well being of our people who have come from Europe during the past two centuries and have made our republic function and survive.

There can be no freedom without the security of the independence which comes from private property protected by our constitution.

Were the eager young men who promoted the Watergate bugging caper to protect our national security from those foreign and domestic agents seeking to destroy it, acting in our best interest?

Was the amazing display at the Democratic Convention the result of foreign espionage?

How did radicals get control and bar Mayor Dailey and his delegation? Even he would have liked to know what went on at Democratic Headquarters.

Should Mr. Nixon have publicized the actions of "eager beaver" election workers before election to insure his defeat and possible destruction of our country?

Was it not the duty of the administration to find out?

In Wisconsin where Hutter has a resort, burglary ranks with spitting on the sidewalk, as a misdemeanor. His property has been burglarized and vandalized a hundred times. Units have been used for drying out Marijuana. No arrests have been made.

In Chicago, crime of course, is a way of life. Consider the following letters to the Superintendent of Police. No reply was received.

May 1, 1974

James Rochford
Superintendent of Police
1121 S. State Street
Chicago, Illinois

Dear Sir:

I have written you on several occasions about the unbearable conditions existing in the area of our building at 3526 N. Marshfield Ave., Chicago, Illinois.

As your records will show we have called in the police more than a dozen times to no avail.

With conditions the way they are it is impossible to keep tenants in the building or rent apartments to new ones. This is a changing neighborhood with an influx of Puerto Ricans and other minorities.

Your files will tell you of the details here summerized.

(1) Two burglaries in our roof top apartment (our homestead for 40 years.

(2) Apartments invaded, Puerto Rican flags painted on walls and covered with graffiti.

(3) Various burglaries reported throughout building.

(4) Exit and other lights broken and removed.

(5) Windows broken daily (the adjoining Hamilton School no longer can afford to replace them and board them up.

(6) Shots fired through upper windows.

(7) Rocks weighing several pounds thrown through ground floor windows.

(8) Apartments invaded, mirrors and marble in bathrooms smashed.

(9) Corridor doors, glass and plastic, smashed weekly.

(10) Locks removed from apartment door and new refrigerators stolen.

(11) Social Security checks stolen.

(12) Garage set on fire several times and finally burnt down.

(13) Tenants feel insecure on streets.

I have never received an answer to my previous letter.

Am I to assume that it is beyond the capability of the police to patrol and make it possible for people to feel secure in this neighborhood?

Is there no future for decent people to live in Chicago?

Must decent people continue to flee the city and turn it over to hoodlums?

The city and the neighborhood we have lived in and loved for 75 years is close to total destruction. A few highrise citadels will not offset the decay everywhere present.

Sincerely yours,
John Hutter

Rt. 1, Sturgeon Bay, Wis.
June 22, 1974

Mr. James Rochford:

I wrote you several times, the last on May 1, 1974.

Fire alarms, false and real continue – on May 14 at 3:30 AM some woman ran through the corridors yelling fire.

The continued daily shock was too much for my 78 yr. old wife – she collapsed and was dead in the morning.

Conspirators are trying to drive us out of our building. They killed Mrs. Hutter by their methods just as surely as if they had shot her.

Mrs. Hutter was buried on the farm up here in Wisconsin.

My granddaughter Debbie Coy is trying to look after the building while I am gone.

Last week the conspirators stole a very heavy oak arched panel door from the entrance to our bldg. It would take 3 strong men to do this. A $100.00 reward has been posted in the lobby. Having been born in Chgo. in 1899 and living there ever since it seems unbelievable that citizens can be so harassed and driven from their homestead.

Can you help or must we abandon to the conspirators?

Sincerely,
John Hutter

Certainly the City of Chicago, its corporation counsel and its appointed Receiver in no way conducted their actions and procedure in court in a way that could be considered other than a violation of 19-(a) and the decision of the lower court was "decided in a way probably not in accord with applicable decisions of this court."

A study of the facts presented in (e) and an analysis of the decision of the Appellate Court in (f) presents overwhelming evidence that every conceivable disregard of due process, legal and court procedure and ethics was present in all proceedings since the action was started in 1967.

For all practical purposes all phases of government in Illinois is one big happy family. A Supreme Court justice frequently starts out as an assistant to Ward Committeeman and works his way up as corporation counsel, assistant States attorney, judge of the Municipal, then Circuit, then Appellate and then justice on the Supreme State bench.

It is, I suppose, expecting the impossible for a court in Illinois to be biased against the organization that made his success possible.

No citizen of Chicago or Cook County can expect justice where his rights are in opposition to the political structure. The entire hard working middle class who strived to save and make themselves free of relief rolls, find themselves destroyed by the actions of the city and the county tax system. You will not find one who does not posses clout, that has faith in our government or courts.

Without the protection of our Federal Constitution and our Federal Courts, all of us live in slavery. Constitutional rights where they conflict with units of local government are entirely ignored.

There is a constant parade of indictments and conviction of local politicians in federal courts in Chicago for bribery or zoning violations but not in the field of local taxation which affected millions. State Courts do nothing. It is apparent that even the Federal courts will avoid protecting the Constitutional rights of citizens, if an excuse can be found not to.

The future of our people depend upon this court seizing every opportunity to convince local governments and courts that our Constitutional rights are sacred and must be respected at all costs.

The State Supreme Court has an easy way to avoid responsibility, in practically every case it says to the citizen seeking justice, go away, we will not grant you leave to appeal.

If this court cuts its case load by denying certiorari wherever possible, then it is sending a strong message to local and Appellate Courts, telling them to do whatever they want for they will receive no interference.

The only court Hutter could ask for protection from the destructive acts of the Receiver, was the Appellate Court. It simply ignored the Illinois Supreme Court rules for supersedeas or stay which start when a notice of appeal is filed. That court approved and filed a $2,500. bond but, regardless of motion after motion, it would not enforce or hold the Receiver in contempt for ignoring its rule.

For seven years, Hutter has been trying to see if it were actually possible to find justice in our courts and the protection of his Civil and Constitutional rights. In all the State and Federal courts in Illinois and Wisconsin and in this court he was always denied.

Certainly, practically every citizen would assume that his Constitution will not protect him.

This court is asked to carefully consider this petition and also the petition Hutter is filing at the same time re matter of real estate taxes for the year 1968.

The Appellate Court before entering decision in appendex told the parties to have a conference re settlement. Faber and corporation counsel laughed at Hutter and said, "Go to Wisconsin and forget your building for we are going to take it over." Should Hutter go?

The petitioners pray the court will grant justice.

Respectfully submitted,
John A. Hutter
Attorney for petitioners

NO. 57367

APPENDIX

JOHN A. HUTTER, et al Defendants-Appellants	)	Appeal from
	)	Circuit Court
vs	)	Cook County
	)	Hon. Louis A. Wexler
CITY OF CHICAGO, a Municipal Corporation Plaintiff-Appellee	)	Presiding.

MR. PRESIDING JUSTICE BURKE delivered the opinion of the court:

Defendants appeal from an order entered on March 23, 1972, by the Circuit Court of Cook County appointing Charles B. Zeller, Jr., receiver of an apartment building owned by defendants and located at 3526-28 North Marshfield Avenue, Chicago.

In order to facilitate a better understanding of the present appeal, we deem it necessary to delineate the procedural history of this litigation.

The litigation commenced in 1967 when the City of Chicago initiated a complaint against the defendants in the Circuit Court of Cook County. The complaint alleged that the apartment building owned by the defendants, located at 3526-28 North Marshfield Avenue in Chicago, was in violation of Sections 78-15.1 and 67-4 of the Municipal Code of Chicago.

After a bench trial, Judge Alvin J. Kvistad presiding, the Court held that some of the fourth floor apartments in the defendant's building lacked adequate means of ingress and egress, in violation of the aforementioned sections of the Municipal Code. A mandatory injunction was issued ordering the defendants to vacate any two of the fourth floor apartments. The defendants appealed the mandatory injunction order to this court which decided all issues on the merits against the defendants and affirmed the trial court's decision. (**City of Chicago v.**

Hutter, 110 Ill. App.2d 321, 249 N.E.2d 184). Defendants petitioned for leave to appeal to the Illinois Supreme Court, No. 42401, which petition was denied on September 25, 1969. Defendants subsequently petitioned the Illinois Supreme Court for reconsideration of its previous denial of leave to appeal. This petition was dismissed on November 19, 1969. Defendants then proceeded to petition the United States Supreme Court for a writ of certiorari, No. 954, Oct. Term 1969, which was denied on February 24, 1970.

The case was returned to the trial court for compliance with the mandatory injunction. The defendant failed to so comply and was subsequently cited for contempt of court and was fined $500. on October 9, 1970. The defendant then filed a notice of appeal and petitioned the Illinois Supreme Court to transfer the appeal directly to that Court. This petition, No. 44126, was denied by the Illinois Supreme Court on March 18, 1971, and the case was returned to this court. Subsequently this court affirmed the defendant's conviction for contempt. This court also exercised its power pursuant to Rule 615 (b) (4) (Ill. Rev. Stat., 1969, ch. 110A, par 615 (b) (4) to reduce defendant's fine to $100. for the express purpose of facilitating defendant's compliance with the mandatory injunction, and affording defendant an opportunity to "make his peace with the proper authorities." (**City of Chicago v. Hutter**, 2 Ill.App.3d 1104, 278 N.E.2d 185 (Abstract). The defendant then petitioned the Illinois Supreme Court for leave to appeal. This petition, No. 44974, was denied on March 29, 1972. Subsequent to this denial, defendant proceeded to petition for a writ of certiorari from the United States Supreme Court. This petition, No. 72-447, was denied on November 20, 1972.

After the case had been returned to the trial court for compliance with the injunction, the defendant was again cited for contempt of court for failure to comply. The defendant appealed this judgment of contempt to this court, petition No. 57165, which dismissed the appeal on May 9, 1972. This Court then denied, on June 6, 1972, defendant's motion to reverse the dismissal entered on May 9, 1972. Defendant then filed in this court a petition for reconsideration of the dismissal, which

was denied on August 7, 1972. A similar petition subsequently made by defendant was denied on October 16, 1972.

Defendant petitioned the Illinois Supreme Court for leave to appeal, No. 45544. This petition was denied by the Illinois Supreme Court on January 25, 1973.

On March 23, 1972, the trial court appointed Charles B. Zeller, Jr., as receiver of the defendant's building at 3526-28 North Marshfield Avenue. After entry of this order the receiver proceeded to request defendant Marian Coy for a list of all tenants and their respective rents. Marian Coy was the daughter of the Hutters and acted as their agent for the purpose of collecting rents. Defendant Coy refused to cooperate, and a rule to show cause why she should not be held in contempt of court for failure to comply with the order of March 23, 1972, was issued against her.

On April 18, 1972, defendants filed the present appeal, from the order of March 23, 1972 appointing Charles B. Zeller, Jr., as receiver. On June 2, 1972, this Court issued a stay order staying enforcement of the March 23, 1972 order, appointing the receiver.

At the outset, we observe that the notice of appeal filed by defendants in the present appeal is defective. The notice of appeal fails to conform to the requirements delineated in Rule 303 (c) (2) (Ill.Rev.Stat. 1971, ch. 110A, par. 303 (c) (2) in that it fails to state the relief sought by appellants. However, we are of the opinion that defendants' error is one of form and not of substance and we can percieve no resultant prejudice to appellee and therefore we shall proceed to consider defendants' appeal on the merits.
National Bank of The Republic of Chicago v. Kaspar American State Bank, 369 Ill. 34, 15 N.E.2d 721.

Defendants argue that the March 23, 1972 order of Judge Wexler appointing Charles B. Zeller, Jr., as receiver of their building was improper. The basis of their contention is that a "supersedeas" order was in effect at the time and therefore the

trial court was allegedly divested of jurisdiction. The parties in their briefs and argument used the term "supersedeas"; however, when Rule 305 was amended in 1971, the use of the term "supersedeas" was abandoned and the present designation is "stay" order.
(Ill.Rev.Stat., 1971, ch. 110A, par. 305 (b) (1); see also Committee Comments to Rule 305, Ill. Ann.Stat. 1973-74 Cum. Supp. ch. 110A, par. 305). We shall hereinafter utilize the present designation, namely "stay" order.

The authority for granting and the rules governing stay orders are set forth in ch. 110A, par. 305 (b) (1) (Ill.Rev.Stat. 1971, ch. 110A, par. 305 (b) (1) which provide that the trial or reviewing court may stay pending appeal "the enforcement, force and effect of any other final or interlocutory judgment or judicial or administrative order." The paragraph is clear and unequivocal as to the effect of a stay order, namely that it stays the enforcement of the order or judgment appealed from.

There is no reference in defendants' abstract or in the record to a stay order in effect on March 23, 1972, the date on which Judge Wexler appointed the receiver. The only reference made to a stay order in defendants' abstract and in the record is the stay order issued by this court on June 2, 1972, restraining enforcement of the March 23, 1972 order.

We are of the opinion that the stay order issued by this court on June 2, 1972, had no effect on the trial court's jurisdiction to appoint a receiver on March 23, 1972. This conclusion we believe, is clear from the June 2, 1972 stay order which states in relevant part that the order "operates to suspend enforcement of the order entered on March 23, 1972." The purpose of a stay order is to stay all future proceedings and to restrain the appellee from taking affirmative action to enforce his judgment but a stay order does not impair the validity or effect of the judgment. **Western United Dairy Co. v. Miller,** 40 Ill.App.2d 403, 189 N.E.2d 786; **Nemanich v. Long Grove Country Club Estates,** 119 Ill.App.2d 169, 255 N.E.2d 466.

The defendants in their argument also rely upon a stay order allegedly issued by the trial court in a prior appeal from the judgment of contempt. (Ill.App Ct. 1st Dist. No. 55302, **City of Chicago v. Hutter**, 2 Ill.App.3d 1104, 278 N.E.2d 185 (Abstract). Defendants maintain that this stay order allegedly issued on October 9, 1970 "was in effect" when the trial court appointed the receiver on March 23, 1972, and therefore the trial court did not have jurisdiction to appoint the receiver.

Defendants have not seen fit to include the alleged stay order of October 9, 1970, in either their abstract or in the record. Moreover, we are of the opinion that the abstract and record are not sufficient to fully present this claimed error and we cannot consider defendants' contention as to the alleged stay order of October 9, 1970.

Defendants also argue some vague and conclusory allegations relating to alleged deprivation of their constitutional rights. We are of the opinion that these issues were neither presented nor litigated in the trial court and therefore cannot be raised on appeal. **Goodrich v. Sprague**, 376 Ill. 80, 32 N.E.2d 897; **Murphy v. Kumler**, 344 Ill.App. 287, 100 N.E.2d 660.

The mandatory injunction was originally issued by Judge Kvistad in 1968. As of March 23, 1972, the date on which Judge Wexler appointed the receiver, defendants had still not complied with the injunction. Moreover, the violations in defendants' buildings are of a continuing nature and have rendered the property unsafe and a danger to the community.

As the Illinois Supreme Court stated in **Community Renewal Foundation, Inc. v. Chicago Title and Trust Co.**, 44 Ill.2d 284, 291, 255 N.E.2d 908, 913:

> "we regard the appointment of a receiver to obtain compliance with the building codes, where because of continuing violations the property has become unsafe and a danger to the community, as within the inherent powers of an equity court. (See 45 Am. Jr., Receivers, 830-32, 842; Clark, Law of Receivers, s46.)"

We are of the opinion that upon consideration of the facts and circumstances of this case, the order appointing a receiver was proper.

For these reasons, the judgment of the Circuit Court of Cook County appointing a receiver is affirmed.

JUDGMENT AFFIRMED.

GOLDBERG AND EGAN, JJ., concur.

Dated October 1, 1973
Petition for rehearing denied Nov. 1, 1973

Justim Taft
Clerk

March 21, 1974

Mr. John A. Hutter
Attorney at Law
3526 N. Marshfield Avenue
Chicago, Illinois 60657

In re: City of Chicago, a municiapl corporation, respondent, vs. John A. Hutter, Jr., et al., etc. et al., petitioners No. 46331.

Dear Mr. Hutter:

The Supreme Court today made the following announcement concerning the above entitled cause:

"The portion of the motion by petitioners for reconsideration of the order denying petition for leave to appeal is denied. The part of the motion for stay of mandate pending appeal to the Supreme Court of the United States is allowed."

Very Truly yours,

(Signed) Justin Taft
Clerk of the Supreme Court

JT:jae
cc: Richard L. Curry